

NEWPORT BEACH PLANNING COMMISSION MINUTES
Council Chambers – 3300 Newport Boulevard
Thursday, March 22, 2012
REGULAR MEETING
6:30 p.m.

A. CALL TO ORDER - The meeting was called to order at 6:40 p.m.

B. PLEDGE OF ALLEGIANCE – Led by Commissioner Brown

C. ROLL CALL

PRESENT: Brown, Hillgren, Myers, Toerge, and Tucker

ABSENT: Ameri and Kramer

Staff Present: Kimberly Brandt, Community Development Director; Brenda Wisneski, Deputy Community Development Director; Patrick Alford, Planning Manager; Gregg Ramirez, Senior Planner; Kay Sims, Assistant Planner; Leonie Mulvihill, Assistant City Attorney; and Tony Brine, City Traffic Engineer

D. PUBLIC COMMENTS

Chair Toerge announced that it is against the Fire Code to stand in the aisles in the Chamber and advised the audience to be seated.

Chair Toerge invited comments from those in the audience who wished to address the Commission on other than Agenda items. There was no response and Chair Toerge closed the public comments portion of the meeting.

E. REQUEST FOR CONTINUANCES

Community Development Director Brandt reported that there were no requests for continuances at this item.

F. CONSENT ITEMS

ITEM NO. 1 Minutes of March 8, 2012, Study Session

ACTION: Approve and file.

Motion made by Commissioner Tucker and seconded by Commissioner Myers, and carried (3 - 2), with Commissioner Brown and Commissioner Hillgren abstaining, and Commissioner Ameri and Commissioner Kramer absent, to approve the minutes of the Planning Commission March 8, 2012, Study Session as submitted.

AYES: Myers, Toerge, and Tucker

NOES: None.

ABSENT: Ameri and Kramer

ABSTENSION: Brown and Hillgren

ITEM NO. 2 Minutes of March 8, 2012

Motion made by Commissioner Tucker and seconded by Commissioner Myers, and carried (3 - 2), with Commissioner Brown and Commissioner Hillgren abstaining, and Commissioner Ameri and Commissioner Kramer absent, to approve the minutes of the Planning Commission March 8, 2012, Regular Meeting as submitted.

AYES: Myers, Toerge, and Tucker

NOES: None.

ABSENT: Ameri and Kramer

ABSTENSION: Brown and Hillgren

G. PUBLIC HEARING ITEMS**ITEM NO. 3** 2808 and 2812 Ocean Boulevard Lot Merger – (PA2011-141)
2808 and 2812 Ocean Boulevard Lot Merger

Chair Toerge read the title to the aforementioned item, opened the public hearing and called for a report from staff.

Community Development Director Brandt reported this is an unusual item for the Planning Commission to consider in that it has been before the Commission previously with action taken denying the project. The applicant appealed the decision to the City Council and it referred the item back to the Commission for additional review and recommendations and return to Council for final action. Ms. Brandt deferred to staff for a report.

Assistant Planner Kay Sims presented details of the report addressing location, previous approval by the Zoning Administrator, and subsequent consideration and action by the Planning Commission. She stated that the Council referred the item back to the Planning Commission for review of the applicant's alternative development standards for maximum height and floor area which are more restrictive than those allowed by the City's Zoning Code for Single-Family properties within Corona del Mar. She presented exhibits of the merged property and addressed total lot area for the merged property, buildable area, allowed floor area limit and the applicant's proposed alternative. She addressed the City's allowed height limits for a sloped and flat roof and the applicant's proposed height. Ms. Sims noted that if the alternative standards are approved, a condition of approval is included requiring that prior to recordation of the lot merger a restrictive covenant must be recorded with the County Recorder's Office stating the alternative development standards and requiring that all future development on the property must comply with those standards. She noted the attendance of the applicant and representative and offered to respond to questions from the Commission.

Chair Toerge invited the applicant and/or his representative to address the Commission on this item.

Coralee Newman, Principal with Government Solutions, gave a PowerPoint presentation and addressed the Commission representing the applicant and property owner. She introduced her professional team, who she indicated, will be available to respond to questions from the Commission. Ms. Newman addressed self-imposed conditions to deal with concerns based on the height, mass and scale of the proposed home and clarified that at the last Planning Commission meeting, Members indicated there were no plans to review. However, she indicated plans were submitted to the Building Division but were not presented. Subsequent to the Planning Commission and City Council meetings, Ms. Newman stated the applicant has worked on the self-imposed conditions to find a way to provide the City and community with surety that what is being proposed will be built. She affirmed agreement with the condition of approval requiring a restrictive covenant as stated by staff. Ms. Newman expressed that she would like to add another restrictive covenant to increase the side setbacks to require six (6) feet side setbacks rather than the 4-foot-side setbacks currently required by the Zoning Code.

Ms. Newman read the appeal of the Zoning Administrator into the record as, "By the City allowing the interior lot lines to be removed by the lot merger, the City has (according to the formula for the deed restriction in each lot) given him (i.e., Mr. Guida) the opportunity to break the current restrictions and go to an increase in height and add considerable increase in the bulk of his structure." She distributed copies of Exhibit 1, identifying the five homeowners that are part of the covenant as well as Mr. Cliff Jones, who has been representing various parties.

Ms. Newman reported that when the covenants were originally entered into, it was between two (2) parties, involving four (4) lots wherein the two (2) parties granted easements to each other. However, she noted the applicant's respect for his neighbors' requests to keep the house at one story and limit the heights.

Ms. Newman provided a PowerPoint presentation addressing the subject lots, homes not part of the covenants and previously presented information.

Rob Sinclair, Sinclair Associates Architects, presented renderings of the house to explain the project relative to mass and character. He reported working on other landmark properties in Newport Beach and addressed concerns regarding the mass and height of the proposed house. Mr. Sinclair reported the merged lots would create an 80-foot wide lot and addressed setbacks, neighboring properties, scale, creation of an open corner, stepping masses and established grade.

Mr. Sinclair noted that the owner has an American with Disabilities Act (ADA) necessity and addressed the finished floor and creation of a long ramp. He reported that the house will be 5,952 square feet of above-ground space which includes the house and a three (3) car garage. A basement is proposed, but its square footage is not included in the above-ground floor area calculations per Newport Beach Zoning Code regulations. In addition, he presented building areas of the properties developed as single lots and footprint of the proposed residence and addressed a one-story deed restriction between the buyer and adjacent neighbors. Mr. Sinclair presented illustrations of the revised plan including removal of an elevator, inclusion of a grass roof, preservation of views and elevations.

Ms. Newman concluded the presentation stating the belief that the proposed lot merger and home address the neighbors' issues and concerns as stated in their appeal. She reported the applicant is limiting himself to a 1.0 floor area limit, that the City Code allows 1.5 and that although a height of 24 feet is allowed, because of the covenant and sensitivity to neighbors, he is restricting himself to a maximum of 15.6 feet anywhere in the house, as well as a one-story, flat roof home. She stated agreement to increase side yard setbacks to those that would be on two (2) single lots so the increase of each side yard setbacks would total four (4) feet.

Brief discussion followed regarding existence of a basement, which is allowed by Code but not counted toward the total square footage allowed on the property.

Chair Toerge stated the application is unique in that there was a ruling by the Zoning Administrator, a paid appeal by adjacent neighbors and a decision made by the Planning Commission, an appeal to City Council and referral of the item back to the Planning Commission. He indicated that he was compelled to offer the initial appellants additional time to present their information.

Cliff Jones, representing the initial appellants, gave a PowerPoint presentation and requested the Planning Commission deny the lot merger noting that those who will be most affected by the proposed project are the adjacent neighbors. He stated the City advised that the existing covenants cannot be ruled on as to their validity because they were private deed restrictions and not part of the City. He expressed confusion since initial discussion pertained to a lot merger, but now it includes a house. He stated the existence of 11 deed and easement restrictions on the properties and the possibility of self-imposed additional restrictions covering the same area. Mr. Jones felt that the real facts of the issue were being obscured in that it is a lot merger which is why those he represents have not aggressively pursued the existing deed restrictions and easements through litigation. He referenced Title 19 and addressed the proposed changes noting that the house is 12,000 square feet with 6,000 being basement and raising it by four (4) feet which will affect the views. Mr. Jones addressed the established grade and restrictions and stated the overall height will be 19 feet, not 15.6 because of the allowance of guardrails on the deck.

Mr. Jones noted that this is not about the house or the height, but rather a lot merger and felt the proposed application has had a substantial impact on the neighbors as they are advanced in age and the pressure has drawn on their strength and ability. He referenced the ordinance for lot mergers relative to consistency and compatibility and felt that the project fails to comply. Mr. Jones presented a brief history of the area, easements and existing covenants, noted the interconnection of the lots and referenced a petition signed by all adjacent neighbors opposing the lot merger. He addressed the distinguishing characteristics of the neighborhood, use of common alleys, underground utilities, lot size compared to the Ahmanson lot, impacts to views and comparable lots. Mr. Jones reiterated the action requested to the Planning Commission to re-affirm its previous decision regarding the lot merger.

Discussion followed regarding the relationship between the lots, adherence to deed restrictions needed with redevelopment, limitations to build one-story structures, possible alternatives, impacts related to the size of the lot, existing housing stock along Ocean Boulevard, height concerns, possible impacts to the health of younger neighbors and that not being an issue, issues related to the size of the lot versus the lot merger and the probability of other lots becoming merged.

Chair Toerge opened the public hearing.

Jeffrey Dufine, representing the Campbell's, gave a PowerPoint presentation and addressed the existing covenant restricting homes to one-story noting it was intended for the back lots to grant easements to front lots in trade for a view. He stressed the need to comply with the existing covenants rather than the self-imposed covenants being proposed. He disagreed that the lot merger will be consistent with the surrounding pattern of development noting that the lot merger law says nothing about the house, but rather protecting the community as to the size of the lot.

John Silva reported the proposed project has affected his health and welfare.

Alberta Silva noted they have been part of the community for a long time, always servicing people in some capacity; she noted their house is their dream, that the project has affected their health and welfare and referenced a previous meeting with Mr. Guida. She mentioned that his purpose for the meeting was to remove their easement for the purpose of his plans. Mrs. Silva asked that the Planning Commission not allow the merger and felt that it will decrease the value of their house and add to her husband's and her health problems.

Peter Campbell, representing his parents Joan and Robert Campbell, noted they are not 20-year old tri-athletes but that this is their life and they have worked their entire life to be in this neighborhood, in their home. He stated the project has been very distressing and goes against progress. He stated no one in the neighborhood is for the lot merger and opined Mr. Guida has not shown any respect for them. Mr. Campbell asked that the Commission consider that this issue is affecting people's lives.

Valerie Marcotte felt that age and health are very relevant, especially since the ordinance addresses peoples' health, comfort, and peace. She addressed the importance of adhering to existing covenants, not the newly proposed covenants. Ms. Marcotte stressed the existing covenants specifically addressed easements and height, that adjacent neighbors do not want to look at the back of someone's garage and noted the differences between building one large house compared to two smaller houses and their related heights. Ms. Marcotte opined that the 3-D illustrations presented by the applicant; do not match the reality when considering site lines. She addressed reduced property values and the health and welfare of the Campbell's in relation to the stress of construction, noise and the loss of their view.

Dan Purcell noted the clear intent of the covenant was to protect views and addressed comparison of the lot to others (The Village) in Corona del Mar. He felt the project is injurious to the adjacent neighbors who purchased the properties knowing the covenants were in place and referenced decreased property values in connection with the project.

Mark Todd, Realtor for the Guida's, referenced building plans submitted for property on Ocean and Heliotrope noting that there will be construction in the area. He opined that the Guida's have been demonized, acknowledged the neighbor's concerns but indicated his clients have a dream as well. He stated the house, above grade, will be smaller and noted that the square footage of the garage is typically, not counted. Mr. Todd referenced existing homes above grade.

Ed Hepner reported that he organized the removal of telephone and electrical poles in the neighborhood in 2000. He addressed the pattern of development in Block 34, noting all lots in the neighborhood are single lots. He felt that the proposed merger would be breaking with precedent and would be inconsistent with the zoning and building code.

Dr. Danny Daneshmand, representing the owners of 2824 Ocean Boulevard, spoke in opposition to the proposed lot merger and stated that many neighboring residents are also opposed, addressed decreased property values, and opined that the approval of the lot merger will lead to lawsuits.

Robert Hawkins felt that focus should be on the merger section and sub-division code, which he referenced, and addressed the need for consistency with the applicable zoning regulations as well as other regulations related to the General Plan and Coastal Land Use Plan. He opined that other regulations include easements affecting the property (the existing deed restrictions on the property). Mr. Hawkins stated that since the other regulations are not defined in the plans, the deed restriction is one of them. He addressed consistency with the surrounding pattern of development and not creating an excessively large lot and stated the proposed lot merger does not fit the pattern of development in Corona del Mar. Mr. Hawkins stated that, according to the regulations all of the findings must be met and felt that at least three of them could not be met.

Mark Binder stated that the reason he chose to build a house in the Village was because of its quaint nature. He felt the proposed lot merger is not consistent with the rest of the community and that the Commission should not set precedence. He asked the Commission to deny the merger in order to maintain the integrity of the community.

Harlan Rushing spoke in opposition to the proposed merger and stated that it is a monster that does not belong in the neighborhood.

Andrew Patterson spoke in support of the project, addressed building heights and opined that property values would not decrease but that if adjacent neighbors wanted to, they could build higher and if the property was sold, the new owners would build to the maximum height allowed and their views would be increased. He addressed concessions made by the applicant and felt that they present a solution for everyone concerned.

Richard Ardis felt the proposed house would block the sun and that the height of the house will be considerably higher than exists presently.

John Whelan, Attorney representing John and Judy Guida, addressed the intent of the drafters of the easements discussed. He stated none of the people speaking tonight were party to or the original people that entered into those easements. Therefore, they are not in a position to define the intent but rather are speculating. He stated the only way to determine the intent is to read the language the originators used in developing the easements. Mr. Whelan noted the language of the easements does not indicate that the adjacent neighbor views would be protected forever or indicate limitations to the height of homes. He stated the language used was, "one story in height" which is what his clients are proposing.

In response to Vice Chair Hillgren's question regarding why he thought the drafters of the easements limited heights of homes to one-story, Mr. Whelan responded that it was clearly to preserve the view.

Robert Clark reported that he has lived in the City for 52 years, has seen many changes and commented on the uniqueness of Ocean Boulevard. He opined that the parcels on Ocean Boulevard were made larger than typical lots in Corona del Mar when the original subdivision occurred. The lots along Ocean Boulevard need to be larger and that precedence has been set to allow for larger lots. He referenced the Ahmanson property as a comparable project as well as others on Ocean Boulevard.

Jim Mosher referenced CEQA requirements and the exemption of this project because it qualifies for a Class V exemption. Mr. Mosher stated that in order to be in Class V, the Council would need to make a finding that the approval of this project would produce no change in density. He addressed the combined acreage of the merged lots and related density change (by a factor of 2) and stated that lot mergers in the coastal zone are not legal without approval from the Coastal Commission.

Ms. Newman, Government Solutions, stated that her client has tried to be as sensitive as possible, acknowledged the height issue, and noted that is why the self-imposed restrictions have been developed. She requested help from staff regarding the addition of language to the conditions of approval in the stipulated agreement with the larger setbacks.

Seeing and hearing no one else wishing to address the Commission, Chair Toerge closed the public hearing.

Commissioner Myers agreed that this is a lot merger issue, but that it also relates to the planned house and how it will impact the adjacent neighbors. He acknowledged the deed restrictions run with the land, but indicated that change is inevitable and homes become obsolete. He felt that the applicant has gone out of his way to satisfy the spirit of the deed restrictions, by maintaining a low-roof line and that the home is not out of character with the neighborhood.

Commissioner Tucker welcomed new Commissioner Brown and referenced a quote from former Commissioner Ann Gifford who would say, "The job of the Planning Commissioner is to protect neighbors from the applicant and the applicant from neighbors". He felt that is what is currently occurring. He opined the matter has nothing to do with the deed restrictions, as they were a private contract entered into by private parties. Commissioner Tucker felt this is a technical exercise and pointed out that the finding related to the health, safety, comfort and general welfare, does not refer to anyone, specifically, but is rather, a generic standard that is applied. He disagreed with Mr. Hawkins' comments regarding the definition of regulation versus private covenants and referenced findings relative to the consistency and compatibility with surrounding developments and the avoidance of an excessively large lot. He questioned whether the proposed merger causes an excessively large lot and re-iterated that it is not the City's place to get involved with private covenants. He indicated that he would have been in support of the applicant's application for a lot merger without any restrictions if he had been a part of the first Planning Commission hearing, and added that he did not see the need for any restrictions.

Vice Chair Hillgren noted the two (2) existing properties are not in compliance with the existing code relative to the minimum lot area and width, and that with the lot merger, it would make it more compliant. He felt there is an opportunity with this process to develop a home that the Guida's would be comfortable with; and where the surrounding residents would be better served because it would give them under better terms and for a longer term of protection than what currently exists. He indicated that he would have encouraged the applicant and neighbors to work together to develop a mutually acceptable solution.

Chair Toerge stated the dangers of relying on view simulations noting they are only good if they are verified. He addressed change and referenced the merger of lots in relation to the Ahmanson house and the two additional findings included by the City Council update to the Lot Merger Code in 2009. He addressed the unique configuration of the subject lots, and neighboring lots and felt that the project is not consistent with the findings required by the current lot merger code.

Commissioner Brown acknowledged the opposing viewpoints, emotional appeals, and definition of terms. He felt that precedence has already been set and agreed the issue is a technical one related to what the City has jurisdiction over. He indicated that he probably will support the applicant's project.

Motion made by Vice Chair Hillgren to adopt a resolution recommending approval by the City Council of Lot Merger No. LM2011-002 to merge the properties at 2808 and 2812 Ocean Boulevard (PA2011-141) under common ownership with the following modifications 1) that the setbacks would be increased, as the applicant indicated, to a total of 12 feet (6 feet on each side), 2) that the height of the building would be reduced by three (3) feet through a reduction in the amount of retaining that raises the ground floor or in the reduction in the overall height of the home or a combination and 3) a reduction in the amount of floor-area ratio allowed from 1.0 to .75.

Assistant City Attorney Mulvihill asked whether the motion includes the recordation of a restrictive covenant to enforce and have the public at large and City be able to enforce it.

Substitute Motion made by Commissioner Tucker and seconded by Chair Toerge, to adopt a resolution recommending approval by the City Council of Lot Merger No. LM2011-002 to merge the properties at 2808 and 2812 Ocean Boulevard (PA2011-141) under common ownership with the following modifications 1) that the setbacks would be increased, as the applicant indicated, to a total of 12 feet (6 feet on each side) and that enforcement of the restrictive covenant should be on the part of the City and the affected property owners.

Substitute Motion made by Chair Toerge to recommend the City Council deny Lot Merger No. LM2011-002. The substitute motion failed for lack of a second.

Substitute Motion made by Commissioner Myers and seconded by Vice Chair Hillgren, and carried (3 – 2) with Commissioner Ameri and Commissioner Kramer absent to adopt a resolution recommending approval by the City Council of Lot Merger No. LM2011-002 to merge the properties at 2808 and 2812 Ocean Boulevard (PA2011-141) under common ownership with the following modifications 1) that the setbacks would be increased, as the applicant indicated, to a total of twelve (12) feet (6 feet on each side), 2) that the height of the building would be reduced by three (3) feet from the voluntary height restrictions as proposed by the applicant through a reduction in the amount of retaining that raises the ground floor or a reduction in the overall height of the home or a combination and 3) a reduction in the amount of floor-area ratio allowed from 1.0 to .75 and that enforcement of the restrictive covenant should be on the part of the City and the affected property owners (beneficiaries of the covenant).

AYES: Brown, Hillgren, and Myers
NOES: Toerge and Tucker
ABSENT: Ameri and Kramer
ABSTENSION: None.

RECESS AND RECONVENE

Chair Toerge called a recess at 8:57 p.m. The Commission reconvened at 9:11 p.m. with Commissioners Ameri and Kramer, absent.

ITEM NO. 4 Newport Banning Ranch - (PA2008-114)
5200 West Coast Highway

Chair Toerge read title to the aforementioned item and explained the purpose of the present hearing. He noted that certification of the EIR does not constitute approval of the project, but signifies that the EIR adequately summarizes the effects the project would have on the environment after the implementation of mitigation measures. Chair Toerge requested the record demonstrate that a discussion of the issues took place at this Commission level and that the Commission understands the consequences of the project before consideration. He indicated that the intention was to demonstrate such understanding by discussing substantive issues raised in EIR, the public's written comments to the EIR, responses to comments, as well as, credible and relevant verbal comments from the public at this hearing. The foregoing will provide a basis for the Commission to make a recommendation to the City Council as required by CEQA, based upon substantial evidence in the record. He asked for the assembly to keep in mind that not every impact is a "significant" impact. The EIR addresses what is significant and what is not significant and how one would know. He added that some of the effects are judged on empirical data such as traffic and noise, some are judged on more specific details. He added that "substantial evidence" is defined by CEQA and does not include personal opinions, not supported by fact, no matter how heartfelt those opinions are.

Chair Toerge reported that the Planning Commission is bound by CEQA to disregard argument, speculation, unsubstantiated opinion, and other evidence that is not credible and/or not supported by fact. Each speaker may raise EIR-related issues which the speaker believes merit further discussion. The Commission will then close the public hearing and bring the matter back to the Commission for comments. After that, the Commission will consider whether or not the EIR needs to be re-circulated. He stated that if the EIR is certified and thereafter, challenged in court, the administrative record will include an actual, verbatim transcript of the hearing. Chair Toerge indicated that he wants the record to be complete and demonstrate that the Commission understands its responsibility under CEQA and that consideration was made of all the substantial evidence that was presented to the Commission before reaching its decision. He stated that thanks to the efforts of staff, the environmental consultants and the sophistication of the commenting public, he believes that the Commission and the public will be able to understand the consequences of the project, which is the goal of the hearing.

Chair Toerge continued stating that according to the CEQA guidelines, the basic purpose of CEQA is to inform Government decision makers and the public about the potential significant environmental effects of the proposed activities, identify the ways that environmental damage can be avoided or significantly reduced, to prevent significant, avoidable damage to the environment by requiring changes in projects through the use of alternative or mitigation measures when the governmental agency finds the changes to be feasible, to disclose to the public the reasons why a governmental agency approved the project and the manner in which the agency chose if significant environmental effects were involved, to compel the government, at all levels to make decisions with environmental consequences in mind. CEQA does not require technical perfection, but rather, adequacy, completeness, and a good-faith effort at full disclosure. CEQA requires that decisions be informed and balanced. It must not be subverted into an instrument of oppression and delay of social, economic or recreational development, or advancement. An EIR is an informational document which will inform public agency decision makers and the public, generally, of the significant environmental effects of a project, identify proper ways to minimize the significant effects and describe reasonable alternatives to the project. In reviewing the draft EIR, persons and public agencies should focus on the sufficiency of the document at identifying and analyzing the possible impacts on the environment and ways in which the significant effects of the project might be avoided or mitigated. Comments are most helpful when they suggest additional, specific alternatives or mitigation measures that would provide better ways to avoid or mitigate the significant environmental effects. At the same time, reviewers of the EIR should be aware that its adequacy is determined in terms of what is reasonably feasible in light of factors such as the magnitude of the project at issue, the severity of its likely environmental impacts and the geographic scope of the project. CEQA does not require a lead agency to conduct every test or perform all research, study, and experimentation recommended or demanded by commentators. When responding to comments, lead agencies need only respond to significant environmental issues and do not need to provide all information requested by reviewers as long as a good-faith effort of disclosures is made in the EIR. Reviewers should explain the basis for their comments and should submit data or references offering facts, reasonable assumptions based on facts or expert opinions supported by facts in support of their comments. Pursuant Section 15064 an effect shall not be considered significant in the absence of substantial evidence. An EIR should be prepared with a sufficient degree of analysis to provide decision makers with information which enables them to make a decision which intelligently takes account of the environmental consequences. An evaluation of the environmental effects of the proposed project need not be exhaustive but the sufficiency of an EIR shall be reviewed in light of what is reasonably feasible. Disagreement amongst experts does not make an EIR inadequate, but the

EIR should summarize the main points of disagreement amongst the experts. The courts will look not for perfection, but for adequacy, completeness, and a good-faith effort at full disclosure. Arguments, speculation, unsubstantiated opinion or narrative, or evidence that is clearly inaccurate or erroneous, or evidence that is not credible, shall not constitute substantial evidence. Substantial evidence shall include facts, reasonable assumptions predicated upon facts and expert opinions supported by facts. Evidence of economic or social impacts supported by facts that do not contribute to or are not caused by the physical changes in the environment is not substantial evidence that the project may have a significant effect on the environment.

Chair Toerge referenced previous study sessions on the project and the Environmental Impact Report. He reported on the exhaustive documentation and review process and expressed his wish to summarize the issues raised in the public comments, the study sessions and responses to the comments and commence a dialogue between the Commission and the staff and the environmental consultant to address each of these significant issues. There are many issues in the EIR, and many have been raised by the public, which were all responded to as required by CEQA so that the list is not that exhaustive, but rather representative of the more significant issues which have been raised and which the Chair believes merit special consideration by the Commission. He mentioned that after reviewing the list and discuss it with the City staff, the public comment period would take place. In addition, Chair Toerge stated the following issues, and mentioned that they were in no particular order, but were identified by the Planning Commission as the key issues. 1) Failure of the draft EIR to identify environmentally sensitive habitat areas. 2) Failure of the DEIR to designate all of Banning Ranch as an ESHA based upon the U.S. Fish and Wildlife Service finding that the entire property is critical habitat for the gnatcatcher. 3) Lack of studies to determine the level of radiation and mercury at the property. 4) Failure to compare density of the proposed project with other recent coastal Orange County projects. 5) Failure of the EIR to address impacts on human health of toxic air contaminants becoming airborne due to project grading. 6) Question as to if there are sufficient safeguards against oil field related hazards. 7) Question as to if remediation should be conducted first. 8) Failure of draft EIR to analyze 54 vernal pools rather than only 26. 9) Failure to consider impacts on listed species such as the San Diego fairy shrimp, the California gnatcatcher and impacts on the burrowing owl. 10) Impacts on the reduction of raptor habitat. 11) The questions if the City has a conflict of interest due to the project's proposed clean up of City's oil wells which is contended to be a reason for the City to approve the project for the City's financial benefit. 12) The Planning Commission's need to review the Coastal Commission letter. 13) Failure of the EIR to discuss consequences of connections of Ticonderoga to 15th Street. 14) The Bluff Road, North Bluff Road alternative alignments and the consequences of deletion of the 19th Street Bridge from the OCTA's regional traffic requirements. Furthermore, other issues and questions may surface in the subsequent discussion.

Chair Toerge deferred to staff for a presentation.

Planning Manager Patrick Alford re-iterated the subject of discussion is not the project itself, but rather, the EIR. He noted that staff will prepare a detailed report on the project for presentation to the Commission at an upcoming meeting. He addressed ESHAs (Environmentally Sensitive Habitat Areas), reported these are defined by the Coastal Act and listed reasons as to why the City is not in a position to designate them. Mr. Alford reported that staff has provided a thorough analysis in Section 4.6 on the impacts to biological resources and is confident that this will be sufficient for the Coastal Commission to review and make the ESHA designation.

Commissioner Tucker referenced the Coastal Commission letter noting that it contains a definition of Environmentally Sensitive Habitat Areas as, "Any area in which plant or animal life or their habitats are either rare or, especially valuable because of their special nature or role in an ecosystem and which can be easily disturbed if created by human activities and development." He stated his belief that the EIR, the topical response, and the responses to comments starting at page 3-10 are adequate.

Mr. Alford deferred to Ann Johnston of BonTerra Consulting for a report.

Ann Johnston, Principal of Biological Services with BonTerra Consulting, presented a detailed description of critical habitat as defined by the U.S. Fish and Wildlife Service. She made an important distinction relative to constituent elements and primary constituent elements. Ms. Johnston reported that even if a site is described as a critical habitat as a whole, if it does not have the primary constituent elements, it is not critical habitat.

Mr. Alford requested that Ms. Johnston review other biological issues, including vernal pools and impacts on species, such as the San Diego fairy shrimp, the California gnatcatcher and the burrowing owl.

Ms. Johnston reported that vernal pools were evaluated extensively within the biotech report for the project and during vernal pool surveys for fairy shrimp. She listed the professionals involved in conducting the surveys noting that they were independent evaluations and that only two (2) natural vernal pools occur on site with five (5) additional ephemeral pond areas. She stated that no other vernal pools occur on the property, that there are many areas that have pond water, but that there are no other vernal pools. Ms. Johnston reported she received the vernal pool maps provided by the Banning Ranch Conservancy as areas that, in their opinion, were vernal pools. She added that many of the areas occurred on asphalt roads, drill pads, dirt roads, parking areas, abandoned and current oil sumps that pond water accumulated for periods of time but, she stressed that a vernal pool is a unique ecosystem that relies more on pond water where there is a complex series of soil properties, a certain type of complex vegetation, and those features were not present in the 54 areas identified by the Banning Ranch Conservancy.

Discussion followed regarding critical habitat designation relative to the Endangered Species Act and providing a biological opinion on the project.

Ms. Johnston reported that upon approval of the project, a consultation between a Federal lead agency and the Corps of Engineers or the U.S. Fish and Wildlife Service may occur in which the preparation of a biological opinion will be made which evaluates impacts to listed species and impacts to critical habitat.

Ensuing discussion pertained to naturally-occurring vernal pools and pooled water generated by historic activity on site (man-made impact).

Relative to gnatcatchers, burrowing owls and raptor impacts, Ms. Johnston reported that the EIR addressed those issues relative to the existing gnatcatcher population on site, the winter burrowing owls that occur on the property and the raptor forge and habitat that occur on the property. She added that all three (3) resource issues were identified as incurring significant impacts associated with the project as well as the San Diego fairy shrimp. Regarding the raptor habitat, Ms. Johnston affirmed that there will be fewer habitats but will be of higher-quality. She noted that the burrowing owl is a concern to the U.S. Fish and Wildlife Service and is addressed in the EIR. She added that there is no wintering population, but rather birds that come into the County of Orange.

Ms. Johnston addressed the variety of mitigation measures developed for the listed species. She noted the applicant would be required to seek authorization to impact the listed species through the U.S. Fish and Wildlife Service. The EIR has identified mitigation measures that reduce the impacts to levels less than significant, but there is always a chance that the Federal agency may make other requests, and referenced the CEQA mandate. Ms. Johnston addressed edge effects noting that they provide better protection for species.

Mr. Alford suggested deferring questions regarding remediation and hazardous materials to the applicant. Regarding failure to compare density of the proposed project with other recent coastal Orange County projects, Mr. Alford stated that staff does not consider this to be a CEQA issue. He added that the comment did not present any apparent conflicts with any land uses in the area and that staff has addressed compatibility in the land use and aesthetics sections of the EIR and has identified all of the project design features intended to ensure compatibility with adjacent uses. He stated that staff does not think that comparative density is something that needs to be addressed in the EIR.

Regarding the alleged conflict of interest due to the project's proposed clean up of City's oil wells which is contended to be a reason for the City to approve the project for the City's financial benefit, Assistant City Attorney Leonie Mulvihill stated that it lacks merit. She added that the proposed project contemplates remediation of the oil wells on the Banning Ranch site and while it has been suggested that the City's oil wells will also be remediated as part of the project, that is not part of the project.

It was noted that the City's oil wells are currently operating on City-leased property, adjacent to Newport Banning Ranch.

Deputy Community Development Director Wisneski stated that pursuant to the City's Charter, there is a hope that all of the oil wells within the City are consolidated.

Mr. Alford referenced issues related to the Coastal Commission letter, noting that several have already been addressed. He re-iterated that there are no Coastal Land Use Plan (CLUP) policies related to Newport Banning Ranch other than identification of it as a deferred certification area. Issues related to ESHA were addressed previously and he noted that,

there is no provision for a master coastal development permit within the Coastal Act, but the EIR has been revised to refer to the item as a coastal development permit. Relative to the provision of lower-cost visitor accommodations, Mr. Alford reported that the issue is not mandated by CEQA and the EIR provides a thorough listing and analysis of the lower-cost visitor services and recreational facilities including trail systems and public parks as well as improved access to coastal viewsheds.

Relative to analyzing landform alteration, Mr. Alford indicated that this is addressed in the geotechnical section of the EIR as well as in the aesthetics section with visual simulations. Regarding wetland parameters, Mr. Alford reported that the EIR uses parameters from the Coastal Commission, Corps of Engineers as well as the California Department of Fish and Game. In terms of the adequacy of the EIR, Mr. Alford deferred the issue to the City's environmental consultant.

Dana Privitt, Principal of Environmental Services for BonTerra Consulting, reported preparing the responses to comments along with City staff for the EIR and noted it has been subjected to a thorough review by legal counsel and staff and indicated that all of the issues that have been raised have been adequately addressed. She stated that while, there can be a difference of opinion, she feels that the EIR meets the standard of adequacy under the statutes of CEQA and the CEQA guidelines.

Chair Toerge referenced responses to comments in the Coastal Commission letter and inquired regarding the inclusion or consideration of alternative intensities of development on the site, alternative means to access the property, and not relying on access from West Coast Highway, since it would likely be found inconsistent with the Coastal Act.

Ms. Privitt noted that Section 7 of the draft EIR considers several alternatives to the proposed project including a reduction in the amount of development as well as reductions in the development footprint and reported that, in accordance with CEQA, all of the alternatives try to avoid identified impacts or to minimize them. Some changes were considered in the roadway system in the context of potentially reducing environmental impacts by removing the proposed roadway connection of North Bluff Road between 17th and 19th Streets. She noted that is one of the options considered in the EIR. Regarding eliminating a connection between Bluff Road and West Coast Highway, Ms. Privitt stated it is the City's position that there has been no directive from the Coastal Commission that a connection road into the project site from West Coast Highway is prohibited.

Assistant City Attorney Mulvihill reported that there were several comments to the DEIR that made statements and assertions with which the City Attorney's office disagrees. She noted the City's Sunset Ridge Park project had a public hearing before the Coastal Commission that the City had withdrawn its application, and there has been no determination on that project. Ms. Mulvihill reported that several comments during the hearing suggested that the proposed access road was inconsistent with the Coastal Act but there has been no determination by the Coastal Commission. She added that the Coastal Commission staff did in fact identify a proposed road off West Coast Highway that Coastal Commission staff would support and there was no indication that such a road would be inconsistent with the Coastal Act.

Ms. Mulvihill stated that the Coastal Commission staff had a concern about the proposed width of the road. The City presented a road it considered appropriate given the park's location, traffic circulation, and types of turns as part of its design. Concerns were raised by the Coastal Commission staff as to the width of the City's proposed road but there were no findings or determinations made by the Coastal Commission on this issue.

Chair Toerge noted that the Coastal Commission staff report did not preclude the opportunity to build a road provided its impact was reviewed on a more grand scale.

Ms. Mulvihill noted that the finding related to evaluating the City's project, in terms of Banning Ranch, was only a staff recommendation included in a staff report. There was no determination or finding by the Coastal Commission on that issue.

Discussion followed regarding the Coastal Land Use Plan and the assertion the City was not following its own policies is inaccurate since there were no policies related to Banning Ranch.

Mr. Alford indicated the only policy was to declare the deferred certification area.

Ms. Privitt added that it is important to note that the proposed project was considered in terms of Coastal Act policies and there is a discussion regarding the appropriateness of the project and its consistency with Coastal Act policies.

Relative to the elimination of the 19th Street Bridge, Assistant City Attorney Mulvihill reported that the Orange County Transportation Authority Board voted to remove the bridge from the Master Plan of Arterial Highways. Whether the Master Plan of Arterial Highway has been amended, Ms. Mulvihill reported that it is under debate and that the City has been unable to find any findings. The City is still evaluating that issue. She declared she could not confidently state that the 19th Street Bridge has been eliminated from the MPAH.

Brief discussion followed regarding consequences of connections of Ticonderoga to 15th Street and it was noted that the responses to comments makes it clear that the project was not proposing to connect to 15th Street through Ticonderoga.

George Basey, Newport Banning Ranch, noted representing the surface ownership interests on the property, that the oil operator is a separate, distinct entity and referenced negotiated agreements that would afford the opportunity to constrain or limit those operations to two (2) consolidation areas. Mr. Basey addressed a comprehensive environmental assessment and stated remediation will occur and will include all appropriate agency review sign-offs on documentation before any conversion of the site to residential uses. Regarding radiation and mercury, he reported there has been testing and there will be on-site monitoring during the remediation process and materials will be stockpiled properly, according to agency protocols all documented and verified with third-party independent lab testing. Mr. Basey added that before each residential development area there will be an oil field abandonment and remediation effort with agency sign-offs prior to the conversion of the site to other uses.

Commissioner Tucker requested additional information regarding assertions that there will be impacts on human health of toxic air contaminants becoming airborne due to project grading.

Mr. Basey addressed the steps in cleaning and plugging up the oil wells. He addressed venting systems, soil remediation, areas of impacted soils, continual monitoring and testing, transportation of materials to an appropriate facility and amount of material topping remediated soils. Regarding airborne toxics, Mr. Basey reported that the existing grading ordinances as well as others are in place to address them (dust control, limited working hours, etc.).

Brief discussion followed regarding specifications of the concrete plug, other mitigation measures to take place in addition to the oil and implementation of measures throughout the project. It was noted that radiation and mercury issues are without basis.

Chair Toerge acknowledged requests by several groups of additional or consolidated times for public comment. He stated it is not feasible to accommodate all requests for blocked time. Therefore, he stated his decision is to adhere to the standard public hearing format, where each speaker is allowed three (3) minutes to complete their comments. He referenced his initial instructions regarding providing public comments and asked that the public comply and respect the process.

Chair Toerge opened the public hearing.

Steve Ray, Executive Director of the Banning Ranch Conservancy, expressed his disappointment that the Commission has chosen to make it difficult for the public to participate in the process. He indicated he was told that there would be ample opportunity to comment, but felt there is not sufficient time. He stated the possibility of having more individual members of the public attend future meetings. Mr. Ray commented on Commissioner Ameri's absence, assumed it may have been because of a conflict of interest and stated the proper procedure for recusal. He inquired regarding Commissioner Brown's website wherein he published an article regarding Open Space and Banning Ranch. Mr. Ray felt the article shows an obvious bias by Commissioner Brown and questioned whether it is appropriate for him to continue. He opined the Commission is excluding the public from adequately commenting on the issue.

Barry Carlson, Mesa Consolidated Water District, thanked the Commission for the opportunity to speak, described his organization and noted Mesa Water has the ability to provide water to the entire site with one-hundred (100%) percent local ground water. He added using one-hundred (100%) percent local ground water reduces the amount of energy required which has a positive impact on greenhouse gas emissions. He presented the environmental benefits of using local ground water. In addition, he reported the response to Mesa Water District comments by BonTerra Consulting dismisses documented findings based on reference information from the Department of Water Resources, Metropolitan Water District of Southern California, Orange County Water District and Mesa Consolidated

Water District 2010 Urban Water Management Plan and instead bases its response on information obtained from a website on December 13, 2011. He asked the Planning Commission to consider the appropriate documented findings in its endeavor to make an educated decision related to water service for Banning Ranch. He noted that Mesa Water is highly interested in providing continued water service to the entire Banning Ranch area and is neutral to the development of Banning Ranch and is positioned to provide water service if Banning Ranch is developed, remains the same or becomes an open space.

Commissioner Tucker was advised there are people better suited to address the issue than the Planning Commission.

Kim Farthing thanked the Commission for responding to her questions and expressed her concern with the circulation element of the project. She reported attending the OCTA's meeting where they voted to eliminate the 19th Street Bridge. She reported the DEIR traffic study affects 58 intersections (52 existing and six (6) future) of which 16 are in Newport Beach, nine (9) in Huntington Beach and 31 in Costa Mesa and addressed decreased levels of service. She addressed pass-through traffic; decreased levels of service, additional car trips generated by the proposed development and expressed disappointment at not being able to hear the Banning Ranch Conservancy side of the issues. She requested the Commission not certify the DEIR without first taking into account the public hearing factual information being shared tonight.

Suzanne Forster referenced CEQA Guidelines regarding responses to comments noting they must describe the disposition of significant environmental issues raised in the comments. They must good-faith, reasoned analysis and that conclusionary statements unsupported by facts would not suffice. She wondered how many who provided public comment are satisfied with the responses and that their questions were clearly, reasonably and factually answered and their concerns about mitigation was adequately addressed. She felt the responses to her most important questions were not answered, but were rather explanations, justifications and defenses and excuses for the DEIR as it was written. Ms. Forster opined she was told that nothing more could be done, no matter how much the project's impacts degrade the lives, health and safety of those affected. She addressed impacts of traffic, congestion, pollution, noise and safety issues and felt the project will be built on a heavily contaminated oil field. She indicated no additional tests have been conducted since 2001 and addressed hazardous effects and impacts of the contaminated soil. Ms. Forster opined there is no way to ensure off site mitigation and addressed a statement of overriding considerations relative to approve of the DEIR. She felt that even the most severe impacts don't matter, when compared with the public benefits of the project.

Bill Bennett pointed out that one of the issues was traffic impact on Ticonderoga when it is connected to the project. He restated the earlier conclusions of the item and stated a distinction between what's on paper and reality. He reported that the agreement the City has with Newport Crest Homeowners' Association is that Ticonderoga will remain a private dead end street until such time as Bluff Road is completed. At that time it will revert to the City and he opined the City will then connect it to Bluff Road. He felt that will be a traffic impact that is being ignored by the EIR.

George Demos referenced the matter of a conflict relative to Commissioner Brown's article and opined it is incumbent upon the Commissioners to properly address that issue. He addressed visual simulations presented at a previous study session and expressed concerns over the projects impacts on noise, traffic, light and airborne pollution as well as views.

Dorothy Kraus expressed concerns regarding noise impacts due to construction activities for a period of ten (10) years. She indicated the impacts are hardly temporary and expressed her belief that BonTerra's responses to her comments lack merit or legitimacy. Ms. Kraus felt the proposed noise barrier mitigation is only feasible for first-floor residents and that most of the homes in Newport Crest are two stories. She noted that Newport Crest is adjacent to the proposed Bluff Road and addressed decibels of noise annoyance.

Norman Suker stated his objection to the approval of the project, as proposed and asked that all of his comments be included in the record of any and all related proceedings. He addressed protection of his views, until the 2006 General Plan Update, stated he never received notice for it and felt the proposed development will significantly impact his view. Mr. Suker expressed his belief that OCTA has eliminated the 19th Street Bridge and as such, if the Circulation Element is not amended, it will jeopardize Measure A OCTA funding. He opined the DEIR should be revised to eliminate all traffic analysis based upon the bridge being built.

Bonnie Copeland reported she attended the meeting where the 19th Street Bridge was removed from the MPAH. She addressed the transportation and circulation section of the DEIR and felt the City needs to revise it accordingly.

Suzanne Welsh referenced initial comments by the Chair related to the adequacy of the DEIR and stated she does not believe it to be such. She felt it fails to address and disclose full data regarding the California gnatcatcher habitat and its protected status or the fairy shrimp populations. She stated declaring only that the sage brush that the gnatcatchers actively use as being important is ecologically irresponsible as ecosystems are holistic rather than piecemeal. Ms. Welsh opined the visual aspects of the DEIR are subjective and felt that seeing development impacts the community (especially for 10 years). She reported the addressing of the population density and footprint size is insufficient relative to the alternative of reducing these by only ten (10%) percent.

Debbie Koken stated her belief that the traffic and circulation elements of the DEIR need to be completely redone because of the elimination of the 19th Street Bridge from the Master Plan of Arterial Highways (MPAH), it inaccurately claims that Bluff Road must be built regardless of whether or not the development is built and it includes an entrance on PCH which, she indicated the California Coastal Commission has not allowed. She felt the DEIR must be revised to correct its inaccuracies.

Terry Koken reported attending the Coastal Commission hearing regarding Bluff Road and stated that Newport Beach was politely allowed to withdraw its application. He reported there was no indication that the Coastal Commission would hold the DEIR in anything but contempt. He affirmed the 19th Street Bridge has been eliminated.

Patricia Barnes, current Chair of the Orange County Sierra Club, asked that the Commission not recommend certification of the EIR noting that it fails consistently to identify ESHA that exists on the property. She referenced the Coastal Act relative to avoidance of ESHA and felt it has not been addressed adequately in the EIR. She suggested the Commission consider possible amendments to the MPAH before it considers certification of the EIR.

David Cooley addressed inadequacies in the EIR in relation to vernal pools. He reported Santa Ana has a large sign at the Santa Ana Zoo stating the protection of the environment is one of their main reasons for existence and that ninety (90%) percent of vernal pools have been lost in California. He felt the EIR does not adequately address vernal pools and ignores important facts.

Bruce Bartram provided a PowerPoint presentation noting that staff maintains the City's Coastal Land Use Plan does not apply to Banning Ranch. He referenced the General Plan related to Banning Ranch and the requirement of the permitting processes required to satisfy State and Federal environmental regulatory requirements. He addressed the buildable constraints in the General Plan, land use and open space as well as the requirement for the City to work with State and Federal agencies to identify habitat and wetlands to be restore and those where development will be permitted. He referenced the Coastal Commission comments regarding review of the wetlands delineations and recommended buffers by Coastal Commission staff biologists before the EIR is finalized.

Jim Mansfield reported it has been stated that there is no master coastal development permit and felt all references to an MCDP should be eliminated from the EIR, findings and all other related documents. He stated that when the Coastal Commission talks about lower-cost visitor-serving elements, they aren't talking about trails or hotels, but rather campgrounds and other low-cost visitor-serving facilities. Regarding the Bluff Road issue, Mr. Mansfield stated that it was said that there was no directive from the Coastal Commission regarding Bluff Road or the intersection with Pacific Coast Highway. He felt the only reason there was no directive, was that the City of Newport Beach hastily withdrew its primary plan for Sunset Ridge Park prior to the vote to be made by the Coastal Commission. He referenced comments made in Section 14 of the EIR one of which relates to the tremendous density of the proposed plan, particular in the Urban Colony. He addressed the responses to his comments and felt they were insufficient.

Dan Purcell read a letter by Nancy Skinner expressing concerns about the water supply, the City's position regarding drought and water conservation and the impacts related to the Newport Banning Ranch project. She referenced a presentation by a water provider in anticipation of the development and the lack of waste water due to conservation efforts. She stated the more people conserve, the less water is available to be reclaimed.

Taoward Lee asked why the oil operators are not involved in the EIR and inquired whether testing for toxic organics emanating from the ground will be conducted.

Olwen Hageman provided a PowerPoint presentation and illustrations of the pollution on Ticonderoga near Banning Ranch and asked why remediation construction cannot be limited to the point where impacts would not be significant. She expressed concerns regarding the additional pollution generated by the project and the resulting decrease in quality of life. She asked if it was morally acceptable to decrease the quality of life of residents and felt the size of the proposed project is not conservative. She felt the increased traffic will increase pollution.

Chris McEvoy requested the Commissioner reconsider hearing the presentation from the Banning Ranch Conservancy and addressed the Coastal Commission's hearing regarding Sunset Ridge Park noting he felt the Commission would not approve the Bluff Road entrance because going from a two-lane to a four-lane road would impede on the ESHA at the park entrance. He felt the DEIR should be revised to consider the elimination of the 19th Street Bridge by the OCTA and addressed "permanent traffic" associated with the proposed development. He felt that 60 days was not sufficient to review the DEIR properly and that the visuals presented by the consultant were weak and referenced archeological and paleontological sites in the DEIR that were not sufficiently addressed.

Jim Mosher addressed good results in government from observation of the process correctly and felt a key aspect of a properly-reviewed EIR is the public review period. He did not think the time allowed for review of the DEIR by the public was sufficient or provided in a good-faith effort to inform the public of the related impacts. He referenced CEQA requirements regarding notice of the item and felt the notice was not in accordance with them and that the public was not offered information regarding meetings where the public would have an opportunity to comment.

Cindy Black spoke in opposition of the development of Banning Ranch and felt the EIR was not sufficient. She referenced CEQA requirements relative to the identification of environmentally superior alternatives and stated that Alternative B would be it because it provides for restoration of the project site and maintains the greatest amount of open space. She addressed long-term benefits associated with site restoration and the financial feasibility of the alternative but stated no one spoke with the responsible party, the Banning Ranch Conservancy. Ms. Black added that it was asked if the development would create a significant impact to the environment or species and she felt that it would. She addressed the geology section of the EIR and stated she could not imagine how grading activities would not be considered significant impacts. Ms. Black stated she attended the Coastal Commission hearing regarding Sunset Ridge Park, who, she felt was going to deny connection to Bluff Road which is why the City withdrew its application. She felt the ESHAs were not mapped properly and questioned BonTerra's ability to identify ESHA or species present in Banning Ranch. Regarding the City's responses to her comments was very general in nature and was indirect.

Sheila Koff stated one of the patterns that she noticed at this hearing was the well-reasoned analyses from staff and BonTerra has provided the Commission with a lot of information which the Commission has confidently accepted. However, she indicated that many of the public have provided comments regarding discrepancies in the information. She referenced tradeoffs and the Coastal Commission's disallowance of them. She questioned the matter of a smaller but "better" habitat. Ms. Koff suggested that a lot of the information that has been provided needs to be questioned, that the reliability of sources needs to be considered and that noise impacts in the EIR do not include after-market exhaust pipes (Harley Davidson).

Shyang Ray asked regarding "other groups" wanting to address the Commission other than the Banning Ranch Conservancy. She felt the Chair has allowed the applicant unlimited time to speak where the applicant has no more standing than the public. Ms. Ray submitted a copy of Commissioner Brown's blog into the record.

Vincent Phillippi commented on the evaluation of burrowing owls and felt the public should be allowed on the property to find their nests and opined that BonTerra did not legitimately evaluate the issue of burrowing owls.

Paul Grogan recommended the Commission reject the DEIR based upon the fact that their responses to 4.6.1 does not address any specific species of animal life and that their response to the vernal pools issue is not accurate. He added that all vernal pools are temporary.

Seeing and hearing no one else wishing to address the Commission, the Chair closed the public hearing.

Chair Toerge addressed the absence of Commissioner Ameri noting that he did not know the circumstances of why he was not present. Regarding a possible conflict of interest by Commissioner Brown, Chair Toerge indicated conflicts are generally financial in nature and it is up to the potentially conflicted party to identify whether they have a conflict or not and Commissioner Brown does not feel he has a conflict.

Assistant City Attorney Mulvihill suggested hearing from Commissioner Brown and stated that the issue was not a conflict issue but a suggestion that Commissioner Brown was unable to fair and impartial on this decision due to his bias.

Commissioner Brown indicated the comments in his blog were made as a private citizen and was prior to any appointment to the Planning Commission. He indicated that he absolutely can make an objective decision and stated his responsibility as a Commissioner is to the community which he puts first, over his own personal opinions. Commissioner Brown indicated that his personal opinion at that time was formed with the information he had at that time. He stated with the additional information now received, he is unsure about the project. He felt certain that opinion, at that time, will not bias him or the decision to be made. He indicated that his decision has not been made.

Regarding the determination of temporary impacts due to construction, Ms. Privitt noted the distinction of calling it temporary is in the context that at some point in time, the construction ends, so it is not ongoing. She clarified that it is identified that over the entire site, there is not going to be construction for the entire duration over the entire site for that entire time period. However, because of the nature of the duration of the construction that will occur, remediation, building construction, infrastructure and the quiet nature of the site, it is identified as a significant and avoidable impact to the project.

Chair Toerge addressed a request of evidence of notification and Mr. Alford noted the concerns were responded to in the comments and added that at the time of the publication of the notice, the dates for study sessions and public hearings were not yet finalized. Mr. Alford affirmed that the notice provided is acceptable.

Assistant City Attorney Mulvihill addressed the 19th Street Bridge noting that the OCTA Board did take action but that the City has a General Plan which includes a Circulation Element which references a Master Plan of Arterial Highways and there are several steps that go into removing an arterial from the MPAH. She added that she disagrees with the suggestion that the only step that needs to be taken to delete an arterial is action by the OCTA. She stated the City has a responsibility to implement the General Plan and that is the analysis that was taken forward in the DEIR. She did not agree that the OCTA's action affected the accuracy of the DEIR as the DEIR analyzed the Project under both the "no bridge" and "with bridge" scenarios.

Chair Toerge addressed updating tests regarding hazards on the site.

Mr. Basey reported that there will be significant additional confirmation sampling testing as part of the remediation process and as part and parcel to the development process. The baseline was determined from the previous tests and any changes will be caught in the remediation process and additional testing.

Discussion followed regarding the various impacts to traffic to Costa Mesa. It was noted there were mitigation measures outlined for the impacted intersections and they were listed as significant. It was left up to the applicant to work with the City of Costa Mesa to address the mitigation.

Commissioner Tucker noted the letter from the Coastal Commission was actually from staff and the Coastal Commission has not made any suggestions or recommendations. He stated a reference that the City should be working with State and Federal agencies on permitting and noted that process begins with the certification of an EIR.

Mr. Alford affirmed Commissioner Tucker's statement.

Chair Toerge noted the time as 11:30 p.m.

Motion made by Commissioner Tucker and seconded by Commissioner Myers, and carried (5 – 0) with Commissioner Ameri and Commissioner Kramer absent, to continue the aforementioned hearing past 11:30 p.m.

AYES:	Brown, Hillgren, Myers, Toerge, and Tucker
NOES:	None.
ABSENT:	Ameri and Kramer
ABSTENSION:	None.

Commissioner Tucker addressed the comment that the size of the project does not conform to a conservative growth strategy, but he noted that the General Plan calls out specifically the exact development envelope for the property and felt the specific overrules the less specific.

He noted the comment regarding the lack of visual impact analysis of the project from Newport Crest.

Mr. Alford reported staff worked with the person performing the visual simulations, looked for a sampling of viewsheds from public viewpoints and noted that City policy calls for the protection of public views, not private views.

Commissioner Tucker addressed the comment stating the EIR did not properly consider development of oil fields and noted there have been several oil fields that have been developed within the County.

Chair Toerge addressed evaluation of burrowing owls, mating, and osprey, and referenced the level and duration of studies conducted on site regarding migratory and mating habits.

Ms. Johnston reported that the osprey was identified as occurring on the project site but that no observations of direct nesting was seen. Surveys for hawks and other avian species were conducted during the general wildlife surveys which were done throughout the documentation for the site (2007 through 2011). Regarding the burrowing owl, a more defined protocol exists and was followed and includes a wintering survey and a breeding survey. Ms. Johnston explained the protocol that was followed. In response to Chair Toerge's inquiry, she addressed the margin of error in terms of the established protocol.

Commissioner Myers asked whether Coastal Commission staff carries less weight than that of the Coastal Commission itself.

Assistant City Attorney Mulvihill indicated she cannot forecast the basis for the Coastal Commission staff comments and stated she imagines that they take into account the Commission that they support. She added that depending on what the City does with this project, review of the project is not complete because the City of Newport Beach has made a decision one way or the other. The project is in the Coastal zone and will be reviewed by the Coastal Commission. She added that the Coastal Commission staff has pointed out issues and the City's responses have been an attempt to address those issues as fully and completely as possible.

Chair Toerge noted that City staff does not speak for the Planning Commission.

Commissioner Brown stated he understands the issue regarding the 19th Street Bridge and asked staff for recommendations regarding the issue.

Assistant City Attorney Mulvihill reported that the idea of there not being a 19th Street Bridge is not new. She stated that the project has been analyzed without a bridge and there are technical reports indicating what would happen without a bridge. She noted that when the City drafted the document, it was done so according to the MPAH. She believes that the MPAH still has the 19th Street Bridge. Staff will have to look closely at the OCTA action. As far as the DEIR is concerned, the analysis included the 19th Street Bridge and identified impacts but these impacts were also analyzed under the "no bridge scenario".

Motion made by Commissioner Tucker and seconded by Chair Toerge, and carried (4 – 1) with Commissioner Ameri and Commissioner Kramer absent, declaring no reason to have the EIR re-circulated. The motion carried with the following roll call vote.

AYES:	Brown, Hillgren, Toerge, and Tucker
NOES:	Myers
ABSENT:	Ameri and Kramer
ABSTENSION:	None.

Ensuing discussion pertained to alternatives, specifically Alternative C, elimination of the requirement for North Bluff Road between 17th and 19th Streets.

Ms. Privitt reported the physical impacts that would occur in that area associated with the construction of North Bluff Road between 17th and 19th Streets would go away noting they are related to grading and consequently there would be less biological impacts and fewer archeological impacts. She stated it would generate the same amount of traffic, there would be some redistribution of traffic and noted there is no demonstrable difference with respect to air quality and noise. Ms. Privitt added that if the segment were to be constructed later, there would need to be an environmental review at that time and the burden would then be on the party proposing that segment.

Staff noted that under the different scenarios there would be different number of intersections impacted with Alternative C versus the proposed project. Traffic studies were performed for every alternative presented in the EIR.

Mike Mohler, Newport Banning Ranch, felt it has been made clear that the project traffic did not require an extension of the road. There is a City circulation system in addition to an MPAH and these were respected in putting together the project description. He felt the City and the Coastal Commission have wide latitude to make a decision as to how important that link is to the City. The project could sustain itself without that connection. He reported the project generates 14,989 trips per day. He reported his organization wants to be good citizens with the City of Costa Mesa and the City of Newport Beach.

Staff noted that section of road is proposed currently as a two lane roadway.

Ms. Mulvihill reported it has always been the City's position that when the City approves a project that the City will implement the MPAH in its circulation element and General Plan.

Motion made by Commissioner Tucker and seconded by Vice Chair Hillgren, and carried (4 – 1) with Commissioner Ameri and Commissioner Kramer absent, to recommend certification of the Draft Environmental Impact Report for the Newport Banning Ranch project to the City Council (Attachment 1).

Discussion followed regarding the recommendation to continue the item to April 5, 2012. Staff recommended continuance of the project to April 19, 2012.

Chair Toerge thanked members of the public for the understanding, cooperation and participation.

AYES: Brown, Hillgren, Toerge, and Tucker
NOES: Myers
ABSENT: Ameri and Kramer
ABSTENSION: None.

Motion made by Commissioner Tucker and seconded by Chair Toerge, and carried (5 - 0) with Commissioner Ameri and Commissioner Kramer absent, to suspend the rest of the meeting and balance of the agenda.

AYES: Brown, Hillgren, Myers, Toerge, and Tucker
NOES: None.
ABSENT: Ameri and Kramer
ABSTENSION: None.

H. NEW BUSINESS

I. STAFF AND COMMISSIONER ITEMS

ITEM NO. 5 Community Development Director's report.

ITEM NO. 6 Announcements on matters that Commission members would like placed on a future agenda for discussion, action, or report.

ITEM NO. 7 Request for excused absences.

ADJOURNMENT

There being no further business to come before the Planning Commission, Chair Toerge adjourned the meeting at 12:05 a.m.

The agenda for the Regular Meeting was posted on March 16, 2012 at 4:45 p.m. on the City Hall Bulletin Board located outside of the City of Newport Beach Administration Building.

Michael Toerge, Chairman

Fred Ameri, Secretary